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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JOHN GARRETT SMITH,

7 Plaintiff,

v.

8 BRIAN WALKER, et al.,

9 Defendants.

10 CASE NO. C18-5211 BHS

11 ORDER ADOPTING REPORT
12 AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 5), and
15 Plaintiff John Garrett Smith’s (“Smith”) objections to the R&R (Dkt. 6).

16 On April 17, 2018, Judge Christel issued the R&R recommending that the Court
17 deny Smith’s motion to proceed *in forma pauperis* and dismiss his complaint as
18 frivolous. Dkt. 5. On April 23, 2018, Smith filed objections arguing that Judge Christel
19 should recuse himself. Dkt. 6. On May 17, 2018, the undersigned issued an order
20 declining to recuse based on Smith’s filing of a state court action against numerous
21 defendants, including the undersigned and Judge Christel. Dkt. 7. On May 23, 2018,
22 Chief Judge Martinez affirmed the undersigned’s order. Dkt. 9.

23 The district judge must determine de novo any part of the magistrate judge’s
24 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Smith objections are as frivolous as his proposed complaint.

4 Regarding Smith's objections, recusal is not appropriate "where the litigant baselessly
5 sues or threatens to sue the judge." Dkt. 9 at 2 (citing numerous cases). Regarding the
6 merits of Smith's complaint, he is barred from filing a complaint for damages stemming
7 from an alleged wrongful conviction when the conviction has not been vacated or
8 overturned. Dkt. 5 at 2–3. Moreover, the Court agrees with Judge Christel that this action
9 should be considered frivolous under 28 U.S.C. § 1915. Therefore, the Court having
10 considered the R&R, Smith's objections, and the remaining record, does hereby find and
11 order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) Smith's motion to proceed *in forma pauperis* (Dkt. 1) is **DENIED**;
- 14 (3) Smith's proposed complaint is **DISMISSED with prejudice**;
- 15 (4) This action is frivolous for purposes of 28 U.S.C. § 1915; and
- 16 (5) The Clerk shall enter **JUDGMENT** in favor of Defendants and close this
17 case.

18 Dated this 31st day of May, 2018.

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BENJAMIN H. SETTLE
United States District Judge